



California Fair Political Practices Commission

August 26, 1986

Steven L. Dorsey
City Attorney
City of San Marino
Richards, Watson, Dreyfuss & Gershon
333 South Hope Street, 38th Floor
Los Angeles, CA 90071

Re: Your Request for Advice
Our File No. A-86-249

Dear Mr. Dorsey:

Thank you for your letter requesting advice on behalf of City of San Marino Councilmember Benjamin Hammon concerning his duties under the conflict of interest provisions of the Political Reform Act.^{1/}

QUESTION

Councilmember Hammon is a stockbroker with a national brokerage firm, and he receives commission income based on a combination of the number of shares sold or purchased and the total dollar amount of the transaction. May Councilmember Hammon participate in a decision to renew the City's water franchise with California-American Water Company, the wholly owned subsidiary of American Waterworks, Inc., a corporation that is listed on the New York Stock Exchange?

CONCLUSION

Councilmember Hammon may participate in the decision to renew the City's water franchise with California-American Water Company.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated.

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ANALYSIS

The San Marino City Council is currently considering a decision to renew the City's water franchise agreement with California-American Water Company. California-American Water Company has a 50-year franchise with the City, and the City Council will soon decide whether to renew the water franchise for a 15-year term.

California-American Water Company is a wholly owned subsidiary of American Waterworks, Inc., a corporation listed on the New York Stock Exchange. American Waterworks owns approximately 31 operating companies in 20 states. These operating companies serve approximately 1,450,000 customers and provide income to American Waterworks in the amount of approximately \$430,000,000 per year.

The franchise in San Marino covers approximately 4,662 users. The gross revenues earned by California-American Water Company from the San Marino franchise total approximately \$1,500,000 to \$1,750,000 per year.

Councilmember Hammon is employed as a stockbroker for Smith, Barney, Harris, Upham & Co., Inc., a national brokerage firm. He receives commissions for his services as a stockbroker based on a combination of the number of shares sold or purchased and the total dollar amount of the transaction. Neither Councilmember Hammon nor his employer owns any American Waterworks stock. To Councilmember Hammon's knowledge, he has never served as an agent in a transaction involving American Waterworks stock, nor has his firm served as an underwriter for or otherwise received income from American Waterworks. However, at a recent meeting of the City Council, a member of the public raised the question of whether Councilmember Hammon has a conflict of interest in this decision.

Under the Political Reform Act, a public official is prohibited from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. Section 87100. A public official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from its effect on the public generally, on, among other things:

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status,

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aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

Section 87103(c) and (d).

Accordingly, Councilmember Hammon may participate in the decision to award the water franchise to California-American Water Company unless the decision would have a reasonably foreseeable material financial effect on any source of income of \$250 or more, or on his employer.

The Commission has adopted regulation 2 Cal. Adm. Code Section 18704.3^{2/} (copy enclosed) concerning sources of commission income to brokers, agents and salespeople. According to this regulation, the sources of commission income to a stockbroker, such as Councilmember Hammon, are (1) the brokerage business entity through which he conducts business, and (2) the person for whom he trades the stocks, bonds, securities, or other investments. Regulation 18704.3(c)(5). Under this regulation, when a stockbroker trades stock on behalf of a client, the company whose stock is traded is not considered a source of income to the stockbroker. Therefore, American Waterworks is not a source of income to Councilmember Hammon, and would not become a source of income to him even if Councilmember Hammon were to serve as the agent for a client in a transaction involving American Waterworks stock. In contrast, Smith, Barney, Harris, Upham & Co. is clearly a source of income of \$250 or more to Councilmember Hammon. Therefore, the issue is whether the water franchise decision will have a reasonably foreseeable material financial effect on Smith, Barney, Harris, Upham & Co. We conclude that it will not.

Regulation 18702.2 (copy enclosed) contains monetary guidelines for determining whether the effect of a decision on a business entity which is a source of income to, or employs a public official will be considered material. This regulation

^{2/} Regulations 2 Cal. Adm. Code Sections 18000, et seq., all references to regulations are to Title 2, Division 6 of the California Administrative Code.

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provides different standards of materiality depending on the size of the business entity; however, in each instance, the business entity's gross revenues, expenses, assets or liabilities must be foreseeably increased or decreased by a specified amount. You have not provided information concerning Smith, Barney, Harris, Upham & Co. which would enable us to determine which standard in Regulation 18702.2 applies. However, regardless of which materiality standard applies, we have difficulty concluding that any effect on the brokerage firm is reasonably foreseeable.

In the Thorner Opinion, 1 FPPC Opinions 198 (No. 75-089, Dec. 4, 1975), the Commission stated that there must be a substantial likelihood that an effect will occur, as opposed to a mere possibility, in order for the effect to be considered reasonably foreseeable. In Councilmember Hammon's situation, we could speculate that the water franchise decision affecting California-American Water Company might increase the value of American Waterworks' stock, and thereby increase the gross revenues to Smith, Barney, Harris, Upham & Co. in the event the brokerage firm's employees act as the agent in a transaction involving that stock. However, there are a number of other factors which would also influence that effect, such as the timing of the transaction involving American Waterworks' stock, and the number of shares traded. In our opinion, a significant increase or decrease in the gross revenues for Smith, Barney, Harris, Upham & Co. is not reasonably foreseeable as a result of the water franchise decision.

Therefore, we conclude that Councilmember Hammon may participate in the decision to award the water franchise for the City of San Marino to California-American Water Company.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,


Kathryn E. Donovan
Counsel
Legal Division

KED:plh
Enclosure

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July 30, 1986

Ms. Kathryn Donovan
Staff Counsel
Fair Political Practices Commission
P. O. Box 807
Sacramento, California 95804

Re: Councilman Benjamin Hammon

Dear Ms. Donovan:

City of San Marino Councilman Benjamin Hammon has asked me to request written advice on his behalf concerning his duties and obligations under the Political Reform Act of 1974. His specific question is whether he has a financial interest in the decision on whether to renew California-American Water Company's water franchise with the City of San Marino.

Prior to expiration of the existing fifty year franchise, California-American applied for a renewal. The City Council thereupon appointed a committee of residents familiar with water franchises to study this issue. The committee recommended that the only viable alternative available to the City was to renew the franchise, but with only a fifteen year term.

California-American Water Company is a wholly owned subsidiary of American Waterworks, Inc., a corporation that is listed on the New York Stock Exchange. American Waterworks owns approximately 31 operating companies in 20 states, of which California-American Water Company is one. These operating companies serve approximately 1,450,000 customers and provide income to American Waterworks in the amount of approximately \$430,000,000.00 per year.

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The franchise in San Marino covers approximately 4,662 users, or less than 1/2 of one percent of the customers served by American Waterworks, Inc. The gross revenues earned by California-American Water Company from the San Marino franchise total approximately \$1,500,000 - \$1,750,000 per year. Of this amount, approximately 11%, or \$165,000.00 - \$192,500, is provided to American Waterworks, Inc. This represents less than 1/2 of one percent of the gross revenues of American Waterworks, Inc.

Councilman Hammon is a broker with a national brokerage firm employing approximately 2,000 brokers. The commissions Councilman Hammon receives as a broker are usually based on a combination of the number of shares sold or purchased and the total dollar amount of the transaction.

Neither Mr. Hammon nor his firm owns any American Waterworks stock. To Councilman Hammon's knowledge, he has never served as an agent in a transaction involving American Waterworks stock, nor has his firm served as an underwriter for or otherwise received income from American Waterworks.

Councilman Hammon has no personal knowledge that any brokers with his firm have served as an agent in a transaction involving American Waterworks stock. It is likely, however, that each of the more than 3000 securities listed on the New York and American Stock Exchanges has been bought or sold at some time or another by a client of one of the brokers employed by Mr. Hammon's firm. The income received by Mr. Hammon's firm from any such transaction involving American Waterworks stock would be negligible.

A resident appeared at the last regular City Council meeting and contended that Councilman Hammon had a financial interest in the decision on whether to renew the franchise with California-American Water Company. Although his allegations were vague, he apparently believed the decision to renew the franchise would affect the value of American Waterworks stock, and therefore, the income Councilman Hammon or his firm might receive if he or his firm were ever to serve as an agent in a transaction involving American Waterworks stock. Councilman Hammon is requesting written advice on whether he has a financial interest in the franchise renewal.

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Please contact Councilman Hammon at (213) 486-8804
or me if you have any questions.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Steven L. Dorsey".

Steven L. Dorsey
City Attorney
City of San Marino

SLD:cb

cc: Councilman Ben Hammon
City of San Marino
City Hall
2200 Huntington Drive
San Marino, California 91108

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California Fair Political Practices Commission

August 5, 1986

Steven L. Dorsey
San Moreno City Attorney
333 South Hope Street, 38th Floor
Los Angeles, CA 90071

Re: 86-249

Dear Mr. Dorsey:

Your letter requesting advice under the Political Reform Act has been received on August 1, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Kathryn E. Donovan

Kathryn E. Donovan
Counsel
Legal Division

KED:plh